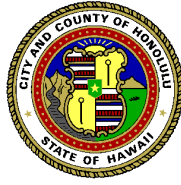


**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL
MAYOR

JAN K. YAMANE
EXECUTIVE DIRECTOR
AND LEGAL COUNSEL

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

Date and Place: August 16, 2017
Kapālama Hale
1st Floor Conference Room

Present: Hon. Victoria Marks (ret.), Chair
Michael Lilly, Esq., Vice Chair

Peter S. Adler, Commissioner
Hon. Riki Amano (ret.), Commissioner
Lynette Lo Kanda, Commissioner
David B. Monk, Commissioner, via video conferencing

Jan K. Yamane, Executive Director and Legal Counsel
Laurie Wong-Nowinski, Associate Legal Counsel
Janice Yonamine, Investigator
Lisa P. Parker, Legal Clerk III
Kristine Bigornia, Legal Clerk I

Moana Yost, Deputy Corporation Counsel,
Department of the Corporation Counsel (COR)

William Iwaoka, Extern, University of Hawai'i at Mānoa,
William S. Richardson School of Law
Dr. Kioni Dudley, member of the public

Absent: Hon. Allene Suemori (ret.), Commissioner

MINUTES OF THE AUGUST 16, 2017 OPEN SESSION MEETING

I. Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at 11:30 a.m. and announced that all Commissioners were present, with the exception of Commissioner Suemori. Commissioner

Monk was appearing via video conferencing from home. He announced that his wife, Amy, was in the room but would be leaving.

Chair Marks requested a motion to move into executive session. It was moved by Commissioner Amano, seconded by Commissioner Adler, and unanimously carried to approve the motion to go into executive session.

*****AGENDA ITEMS TAKEN OUT OF ORDER*****

III. Executive Session (The following agenda items were reviewed in executive session pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.)

A. For Discussion: Kealoha vs. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawai'i, and Civil No. 1:16-CV-16-00682 JMS-KSC in the United States District Court for the District of Hawai'i

The Commission conferred with its attorney, Richard Nakamura.

B. Independent Ethics Investigator Retained Due to Conflict of Interest – None

II.A.3. For Action: Approval of Executive Session Minutes of June 21, 2017
Approval of Executive Session Minutes of July 19, 2017

The Commission convened an executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

The Commission approved the Executive Session Minutes of June 21 and July 19, 2017.

Chair Marks requested a motion exit executive session and return to open session. It was moved by Commissioner Amano, seconded by Commissioner Adler, and unanimously carried to approve a motion to exit executive session and return to open session.

RETURNED TO OPEN SESSION AT 11:38 A.M.

[NOTE: Commission returned to ordered agenda items.]

II. New Business

A. Chair's Report

1. Announcements, Introductions, Correspondence, and Additional Distribution

2. For Action: Approval of Open Session Minutes of July 19, 2017

Chair Marks requested a motion to approve the Open Session Minutes of the July 19, 2017 meeting, as amended. It was moved by Commissioner Adler, seconded by Vice Chair Lilly, and unanimously carried to approve the Open Session Minutes of the July 19, 2017 meeting.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

The Executive Director and Legal Counsel (EDLC) reported that Ms. Parker, Legal Clerk III, helped to finalize and distribute training memos and strategic plan letters, as well as coordinated room reservations and scheduled EDLC meetings with Councilmembers regarding online training and strategic plan. Ms. Parker also completed online computer training for Microsoft Word and would also undertake intermediate Word.

Chair Marks asked if they should send the unions their draft strategic plan, and the EDLC stated that she was awaiting further direction from the Commission. She also informed the Commission that the draft plan was also posted online on the Ethics Commission home page, and that she requested comments on the draft plan by September 1. Commissioner Adler asked if she received any comments, and the EDLC responded in the negative. She also stated that any comments received after September 1 would still be reviewed.

Chair Marks asked Commissioner Adler his thoughts about sending the strategic plan draft to the unions. Commissioner Adler responded that they should send the draft to the unions for comment under the condition that it would not burden the staff.

Commissioner Amano stated that she was in agreement because they have had contact with the unions in the past and that it would also become a partnership as well. Chair Marks asked Dr. Kioni Dudley for comments. He responded that there is collusion between the unions and elected officials; therefore, why would the EC give the unions any special consideration in regard to their strategic plan?

Commissioner Adler responded that the Commission needs and wants the feedback, regardless of where it's coming from, whether from the City Council, the departments, or any member of the public. He stated that interaction was important. If there's collusion and it comes before the Commission, then it will be dealt with at that time. Chair Marks agreed and mentioned that because of collective bargaining, they have to keep the unions informed, but she understood Dr. Dudley's point.

The EDLC informed the Commission that the letter that went out to City departments would be revised and sent to the various unions, with the same comment deadline.

The EDLC continued her reporting. With regard to Ms. Bigornia, Legal Clerk I, she continued to finalize online ethics training. She also archived 6 of 14 boxes of documents. All

staff have assisted with archiving. After staff reviews and prepares the documents, the Department of Information Technology (DIT) scans such documents and Ms. Bigornia files them into an electronic archive. Finally, we shred the hard copies. Ms. Bigornia also completed online training in Microsoft Excel and may be taking Microsoft Power Point courses next.

The EDLC reported that the Po‘okela Fellow completed his internship with the Ethics Commission and that he is presently working with the Department of Human Resources, Equal Opportunity Office, for a few months. The EDLC introduced Will Iwaoka, UH Law School extern, who was present. Alex Balandran, UH Law School extern, was unable to attend the meeting. Externs were assigned over 200 opinions to brief and compile; 65 of those have been completed. Both have expressed confidence in completing all 200 by September 1.

The EDLC reported that Ms. Yonamine, Investigator III, continues to handle her case load. She has will be taking training on pivot tables, which is part of the Microsoft Excel application. The EDLC directed the Commission to the pie chart showing Ms. Yonamine’s breakdown of work hours.

The Associate Legal Counsel (ALC) has focused on implementing online ethics training, including issues such as coordinating meetings, drafting instructions, and preparing memos and emails. In addition, she kept up with her other work, including her case load, overseeing administrative work, and completed Microsoft Excel training. The ALC also attended the “Ethics in Politics” training with the EDLC, which was held at the University of Hawai’i. The speakers were U.S. Rep. Colleen Hanabusa, State Rep. Della Au Bellatti, Mr. Rick Blangiardi, General Manager, Hawaii News Now, and Mr. Dan Gluck, Executive Director and Legal Counsel, State Ethics Commission. The ALC’s pie chart reflected time spent on administrative work, which remained in the 40-50 percent range.

2. Statistics – Update

The EDLC reported that the fiscal year 2017 (FY2017) statistics were complete. She corrected the date on the slide showing website sessions as “August 2017 – 530.” She explained that the line graph on the next slide showed the number of website sessions from July 2016 through June 2017. She explained the difference between website hits and website sessions. Website hits are when the website is viewed very quickly whereas website sessions are when the website is being viewed for a longer period of time. One of the strategic plan objectives is to quantify the effectiveness of the Commission’s work. One example of measurement is an increase in website sessions, which may indicate an interest or need for guidance. There were spikes in website sessions during the months of December 2016 and January 2017 when financial disclosures, lobbyists’ and Board and Commission filings are due.

3. Budget

- a. FY2018 Operating Budget
- b. FY2019 Operating Budget Request

The EDLC reported that we’re in the beginning of FY2018 (July 1, 2017-June 30, 2018) operating budget and that the FY2019 (July 1, 2018-June 30, 2019) operating budget

preparations will commence this month. She reminded the Commission that there's a one-year lag period between when the budget is approved and used.

4. Education and Outreach
 - a. Ethics Training Program – Update

The EDLC reported that the online training had been launched at 4:00 p.m. on August 15, 2017. She complimented DIT for sending it out on the targeted date. The Department of Human Resources (DHR) training section organized a focus group to include ethics staff, the Information Technology (IT) program developer and training staff for the Departments of Facility Maintenance, Environmental Services, Parks and Recreation, Design and Construction, and the Board of Water Supply. These agencies have many blue-collar workers with no desktop computers, who need special accommodations to take the training such as using a fill-in-the-bubble form. It was a very informative meeting as the focus group provided ethics staff with a better understanding of the specific challenges in these departments, such as old computer hardware and/or software, no internet or wi-fi connections, or quick time frames for training temporary summer hires.

After the focus group meeting EC staff met with the IT applications developer who then sent out approximately 68 email training invitations to Cabinet members and other mayoral appointees per the request of the Managing Director.

The EDLC also reported that she met with seven (7) of the nine (9) City Councilmembers so far about the online training at the suggestion of Council Chair Ron Menor. She informed the Commission that she would also be presenting the EC's new training platform to the Mayor and his Cabinet on August 22, 2017 at the Mayor's Cabinet meeting. She plans to showcase the user interface as well as the administrative part of the training. Also, DHR will create two classes to train department coordinators on the new software application. Another training day could be added later, if needed.

The EDLC informed the Commission that she attended a meeting with senior City managers and learned that DIT is in the process of creating a new enterprise system that would bring all City IT systems under one platform. She was elated that the ethics training application was one of the early applications incorporated into the larger enterprise system. She also learned that the current learning management system called "Meridian" will be shut down in 2020; thereafter, everything will be migrated onto this new enterprise system.

The EDLC informed the Commission that the Mindflash training application was still being utilized for all of the board and commission member trainings as DIT was still working on the enterprise system external interface. Seventeen (17) of eighteen (18) Department of Community Services' Community-Based Development division employees completed training and one (1) out of (7) members from the newly established Clean Water and Natural Lands Commission completed training.

5. 2016 General Election Charter Amendment Question No. 2 – Bill 057 (17), Relating to Ethics Commission Staff (Reported for passage Third Reading, Executive Matters and Legal Affairs Committee, July 25, 2017)

The EDLC reported that Bill 57 passed third reading and has been enacted into law. EC staff will replace the affected Revised Ordinances sections in the Commission's resource guide.

6. Audit – None

7. Legislation

- a. Uniform Information Practices Act (UIPA) – Act 165 (Session Laws of Hawai'i 2017) Relating to Information Practices (Report Title: Office of Information Practices; freedom of information; disclosure rules)
- b. City Council
 - i. Bill 050, CD1(17), Relating to City Boards and Commissions (Reported for Passage Third Reading, Executive Matters and Legal Affairs Committee, July 25, 2017)
 - ii. Bill 057 (17), Relating to Ethics Commission Staff (see Item II.B.5.)

The EDLC informed the Commission that the Office of Information Practices (OIP) was conducting training on new Uniform Information Practices Act (UIPA) requirements, including a summary of significant Sunshine Law changes. Training may be viewed online or in person on September 6, 2017 from 10:00 a.m. to noon, at the State Capitol. It also will be recorded and posted to the OIP website.

The EDLC reported that Bill 50 passed third reading.

8. Education Opportunities

- a. Society of Corporate Compliance and Ethics (SCCE), 16th Annual Compliance & Ethics Institute, October 15-18, 2017, Caesar's Palace, Las Vegas, NV (Reschedule October 2017 Ethics Commission Meeting)
- b. Council on Government Ethics Laws (COGEL), Annual Conference, December 3-6, 2017, Sheraton Centre Toronto

The EDLC asked the Commission whether they wanted to reschedule the October 18, 2017 meeting since she, Chair Marks, and Commissioner Amano would not be available as they will be attending the SCCE's 16th Annual Compliance & Ethics Institute conference in Las Vegas, from October 15 through October 18.

Chair Marks informed the Commission that since there were no pressing matters that she was aware of, she was contemplating cancelling the October EC meeting. Vice Chair Lilly and Commissioner Amano agreed to cancel the October meeting. Vice Chair Lilly also stated that a special meeting could be scheduled if an important issue should arise in the interim.

C. For Discussion: Rule-Making and Mayor's Directives, Memoranda, and Department Policies and Circulars, Item V., Administrative Directives Manual Policy Guidance

Chair Marks asked Moana Yost, Deputy Corporation Counsel, to summarize COR's opinion. Ms. Yost stated that the EDLC submitted a request for legal services to COR a few months ago with regard to comparing and contrasting administrative rules with administrative directives. Specifically, the EDLC requested confirmation on whether administrative directives would apply to both the Legislative and Executive Branch officers and employees, and if enforcement of the City's standards of conduct, including assessment of fines and disciplinary action, could be implemented through administrative directives. Vice Chair Lilly asked Ms. Yost to confirm that this discussion was not attorney-client privileged. Ms. Yost confirmed that the memo she sent to the EDLC regarding this matter was privileged, but the matter could be discussed in open session.

Ms. Yost stated that if the EC wants a policy articulated by an advisory opinion or a guideline to have the force and effect of law, then the EC would need to undertake administrative rulemaking under Chapter 91, Hawaii Revised Statutes.

Chair Marks asked if there were any questions for Ms. Yost, and Commissioner Kanda stated that she appreciated her summary of COR's opinion.

IV. For Discussion: Strategic Planning – Exposure Draft Dated June 21, 2017, Distributed to City Officers and Employees for Comment

The EDLC informed the Commission that she sent the draft plan out to the Cabinet and City Council for comment by September 1, 2017. The draft plan was also posted on the EC website. She stated that once the comments are received and compiled, the PIG could meet to discuss and prepare another draft plan. After much discussion, the PIG meeting was confirmed for Wednesday, September 27, 2017 from 8:00 a.m. to 12:00 noon.

Chair Marks asked Dr. Dudley if he had any comments, he responded in the negative. Commissioner Adler stated that he was interested in knowing what Dr. Dudley thought about how the Commission should proceed, considering their role and efforts with their task of rulemaking on super PACs. He further stated that he welcomed Dr. Dudley's comments and mechanics of what they could do in the future, since it's an important issue.

Dr. Dudley asked for clarification about the Commission's rulemaking efforts if it included super PACs. Vice Chair Lilly responded that the rules can't be more restrictive than what the law authorizes. He further explained that the law authorizes the EC to do certain things and the EC can adopt rules to carry out the laws.

The ALC commented that the Commission already decided that the Charter expressly stated that lawful campaign contributions are not a conflict of interest, but there could be a rule established on whether a campaign contribution needs to be disclosed as a conflict against the public interest. She further stated that Will Iwaoka, UH law school extern, was presently working on compiling the advisory opinions on disclosure of conflicts in order to draft a succinct

rule that would accurately reflect the EC's policies to implement Revised Charter of Honolulu Sec. 11-103, which is the disclosure provision. Vice Chair Lilly reiterated that in the proposed rules, the language may require a conflict disclosure if a person is the beneficiary of certain contributions, either directly or from super PACs.

Commissioner Adler concluded that if Dr. Dudley had thoughts about it in the future, the Commission would welcome his comments. Dr. Dudley asked Commissioner Adler for more clarification. The EDLC commented that this should be discussed later as an agenda item so that there will be notice to the public. Commissioner Adler and Dr. Dudley agreed.

V. Adjournment

Chair Marks asked for a motion to adjourn. It was moved by Commissioner Adler, seconded by Vice Chair Lilly and unanimously carried to approve a motion to adjourn.

The meeting concluded at 1:21 p.m.